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Federal Communications Commission

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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
1998 Biennial Regulatory Review —)	IB Docket No. 98-118
Review of International Common Carrier)	
Regulations)	

REPORT AND ORDER

Adopted: March 18, 1999

Released: March 23, 1999

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

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I. Introduction and Summary

1. In this Report and Order we continue our biennial review of common carrier regulations by relieving providers of international telecommunications services of regulatory burdens that are no longer necessary. The steps we take in this order will allow new carriers to enter the market more easily and will allow carriers already providing service more flexibility to conduct their businesses. We also remove or clarify unnecessary or confusing rules and simplify existing procedures.

2. Following adoption of these rules, most new carriers will be authorized to provide international services on most international routes 14 days after public notice of an application. Carriers already providing service will be able to complete *pro forma* transactions and assignments of their authorizations without prior Commission approval and will be able to provide service through their wholly-owned subsidiaries without separate Commission approval. Carriers that are under common ownership with an already-authorized carrier will be able to provide the same authorized services after only a minimal waiting period. Authorized carriers will be able to use any authorized U.S.-licensed or non-U.S.-licensed undersea cable systems in their provision of their authorized services. And the Commission's limited resources will no longer be consumed by ministerial tasks that no longer serve any useful purpose.

3. The initiatives we adopt here result from a thorough review of the rules that apply to international carriers and applicants seeking to become authorized international carriers. The Telecommunications Act of 1996 directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest."¹ In particular, the Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service."² Accordingly, the Commission initiated a comprehensive 1998 biennial review to identify regulations that are overly burdensome or no longer serve the public interest.

4. The International Bureau conducted a public forum and many informal meetings with interested members of the community to seek ideas for ways to simplify, streamline, and eliminate burdens on the industry and the Commission. The Commission then issued a *Notice of Proposed Rulemaking* in which we proposed several deregulatory initiatives.³ We proposed to streamline and simplify the international Section 214 application rules and to eliminate several categories of

¹ 47 U.S.C. § 161 (Supp. II 1996).

² 47 U.S.C. § 161(a)(2).

³ See In the Matter of 1998 Biennial Regulatory Review — Review of International Common Carrier Regulations, IB Docket No. 98-118, *Notice of Proposed Rulemaking*, FCC 98-149, 13 FCC Rcd 13,713 (1998) [hereinafter *Notice*].

international Section 214 applications.⁴ Twenty-three parties filed comments, and those comments have helped us refine our proposals to ensure that we provide all the relief possible while retaining sufficient mechanisms to protect the public interest.⁵

5. The great majority of commenters supported our proposals. Comments filed by the Federal Bureau of Investigation (FBI) and the Department of Defense (DoD), however, raised objections to some of our proposals to forego review of certain Section 214 applications and to disregard changes in carriers' corporate form. The FBI and DoD made both legal and policy arguments and contended that, despite the progression of meaningful economic competition between carriers, it remains important to continue to review some applications and transactions due to national security, law enforcement, and other considerations. We have worked with representatives of the Executive Branch to reconcile the need to protect their public interest concerns with the need to remove unnecessary barriers to an effectively functioning market. We conclude that the measures we adopt in this order successfully reconcile these interests while granting the industry nearly as much regulatory relief as our original proposals.

6. We now adopt initiatives that enable us to —

- (1) Eliminate the requirement that opposed applications be granted by formal written order and reduce the waiting period for granting new streamlined applications from 35 days to 14 days.
- (2) Expand the class of applications eligible for streamlined processing.
- (3) Eliminate the requirement for prior approval of *pro forma* assignments and transfers of control of Section 214 authorizations.
- (4) Allow authorized carriers to provide service through wholly-owned subsidiaries without prior approval, and allow applicants to use the streamlined authorization process to obtain the same authorizations that any affiliates with the identical ownership have already obtained.
- (5) Allow any authorized facilities-based carrier to use any non-U.S.-licensed undersea cable system without specific approval.
- (6) Authorize the use of private lines to provide switched services by declaratory ruling instead of requiring a Section 214 application.
- (7) Reorganize, clarify, and simplify the rules applicable to international Section 214 authorizations.

⁴ See *id.* ¶ 2.

⁵ Parties filing comments and reply comments are listed in Appendix A.

7. The global telecommunications market is changing rapidly in response to technological innovation, market liberalization, deregulation, privatization, and accelerating competition. The Commission continues to look for opportunities to remove regulatory obstacles to a fully competitive marketplace while retaining the appropriate ability to detect and deter anticompetitive conduct. This order is but one in a series of deregulatory and streamlining steps the Commission has taken in this area since the founding of the International Bureau in 1994.⁶ We look forward to continued public participation in this process, and we intend to again review these rules as part of our next biennial review in 2000.

II. Discussion of Rule Changes

A. International Section 214 Authorizations

1. Streamlined authorization procedure

8. In the *Notice*, we proposed to grant a blanket Section 214 authorization for the provision of international telecommunications services on routes where a carrier providing service to or from the United States is not affiliated with a carrier that operates in the destination market.⁷ Our proposal would have allowed new entrants to provide service on those "unaffiliated routes" without prior approval, provided that they notify the Commission within 30 days after beginning to provide such service. We proposed to issue a certification (pursuant to Section 214 of the Communications Act of 1934, as amended⁸) that it would serve the public interest, convenience, and necessity to authorize carriers pursuant to such a procedure.⁹

9. We affirm our tentative conclusion that the great majority of international Section 214 applications do not raise public interest issues that warrant Commission scrutiny. For the reasons described below, however, we conclude that we should not adopt a blanket authorization as proposed in the *Notice*, but should instead adopt a further streamlined authorization procedure that is narrowly tailored to allow us to review applications in advance without causing needless delay or uncertainty. In sum, we modify our streamlined process by eliminating the current requirement that streamlined

⁶ See, e.g., International Bureau Launches New Procedures, Public Notice (Nov. 21, 1994); International Bureau Announces an Industry Briefing Series, Public Notice (Feb. 27, 1995); International Bureau Speeds Processing through the Expanded Use of Grant Stamp and Status Conferences, Public Notice Report No. IN 95-12 (June 6, 1995); Streamlining the International Section 214 Authorization Process and Tariff Requirements, *Report and Order*, 11 FCC Rcd 12,884 (1996) (*1996 Streamlining Order*); Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23,891 (1997), *recon. pending* (*Foreign Participation Order*).

⁷ *Notice* ¶¶ 7-11.

⁸ 47 U.S.C. § 214 (1994 & Supp. II 1996).

⁹ *Notice* ¶ 8; see *id.* Appendix A, § 63.25.

applications be removed from streamlining in the event that an opposition is filed. Our initial public notice listing streamlined applications that have been accepted for filing will not solicit comments from the public but will only provide notice of the date on which the applications will be granted unless an applicant is notified to the contrary. We also shorten from 35 days to 14 days from the initial public notice the period after which applications are automatically granted. Finally, we expand the class of applications eligible for streamlined processing by including applications filed by carriers seeking to provide service on a route where an affiliated foreign carrier has no facilities, or only mobile wireless facilities, in the destination market.

10. Henceforth, for those applications eligible for streamlined processing, we will follow a simpler and faster procedure. Upon receipt of the application, we will send copies of applications, as appropriate, to the relevant Executive Branch departments.¹⁰ The staff of the International Bureau will also review the application to determine whether it is complete and eligible for streamlined processing. If an application is deemed incomplete and not acceptable for filing, the staff will notify the applicant and give the applicant an opportunity to provide the missing information. Once an application is deemed complete and eligible for streamlined processing, the Commission will issue a public notice noting that the application has been accepted for filing and will be subject to streamlined processing pursuant to Section 63.12.

11. The public notice listing streamlined applications as acceptable for filing will indicate that the listed applications will be deemed granted 14 days after the date of the public notice unless the applicant is notified to the contrary. If, during that 14-day waiting period, the Commission staff determines that an application should not be granted through the streamlined process, it will notify the applicant in writing that the application has been removed from streamlined processing. Otherwise, an application will be deemed granted 14 days after the initial public notice, and the applicant may begin operating on the 15th day. As is the current practice with respect to streamlined applications, the International Bureau will issue a weekly public notice of carriers newly authorized pursuant to this procedure.¹¹ We also amend Section 63.12(d) to ensure that an application that is *not* subject to streamlined processing may be granted without a formal written order if it is unnecessary to address any significant issues in writing or to impose any conditions that require written explanation.

12. We have, in the past, stated that applications that qualify for streamlined processing do not generally raise public interest issues because, in those cases, our generally applicable safeguards, the benchmark settlement rate condition, and dominant carrier regulations (where applicable) — rather than denial of applications — will be sufficient to prevent anticompetitive effects in the U.S. market.¹²

¹⁰ Applications to be sent to Executive Branch departments will be selected according to criteria submitted by the relevant departments.

¹¹ We agree with MCI and WorldCom, which state that the Commission should publish or make available the names of carriers taking advantage of our new authorization procedure. *See* MCI Comments at 3; WorldCom Comments at 2.

¹² *See Foreign Participation Order*, 12 FCC Rcd at 24,032 ¶ 322.

Based on the record in this proceeding, we reaffirm this finding and further conclude that there is no reason to routinely seek comment on competitive or other issues that parties may seek to raise in the context of streamlined applications. The likelihood that the Commission would deem a competitive or other issue raised by a commenter sufficiently serious to warrant denying a streamlined application is so remote that the potential benefits of seeking such comment are outweighed by the real benefits of eliminating the possibility that such comments would render an application ineligible for streamlining. These real benefits include a shorter period of time from filing an application to grant of the application and, significantly, the added certainty that an applicant would have as a result of knowing that its application cannot be held up by a vaguely drafted petition to deny filed by its competitors.

13. Furthermore, commenters have stated in the record of this proceeding,¹³ and have told us in other contexts, that having to wait 35 days before being permitted to provide service is a substantial burden and, combined with the uncertainty about whether an application will be opposed and therefore removed from the streamlined process, substantially interferes with new carriers' ability to provide new services and respond quickly to market developments.¹⁴ Although the current streamlined process is itself a product of earlier deregulatory, streamlining initiatives, it is nevertheless our continuing obligation to remove unnecessary barriers to competitive market conditions. We therefore conclude pursuant to Section 11(a)(2) of the Communications Act that, as a result of meaningful economic competition in international telecommunications, it is no longer necessary in the public interest to deny streamlined processing to an application that has been opposed.¹⁵

14. After reviewing the record, however, we are unable to conclude that prior review of international Section 214 applications is no longer necessary. Instead, we find that a 14-day period of review is necessary before we can grant an application. Such a period of prior review will enable Commission staff to identify exceptional applications that raise public interest concerns within the scope of current Commission policies. For example, the FBI has raised concerns that U.S. national security and law enforcement interests could be jeopardized by the provision of telecommunications services by entities whose interests may be contrary to those of the United States. According to the FBI, a particular carrier could jeopardize a national security or law enforcement investigation if the

¹³ See, e.g., PCIA Comments at 14-15 (arguing that, if neither forbearance nor a blanket Section 214 authorization is adopted, the Commission should shorten the period for placing an application on public notice to five days and reduce the comment period to five days).

¹⁴ See, e.g., Ameritech Comments at 3-4 (requiring Section 214 applications impedes vigorous competition); Iridium Reply Comments at 3 (the proposal would help international carriers respond to market developments quickly).

¹⁵ See 47 U.S.C. § 161(a)(2) (Supp. II 1996) (directing the Commission to determine whether any regulation subject to the biennial regulatory review "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service"); § 161(b) (directing the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest").

carrier has a relationship with the subject of the investigation.¹⁶ The FBI argues that the regulatory safeguards that we relied upon in the *Notice* to justify foregoing prior review of applications concern only economic and competition matters and do not address national security and law enforcement concerns.¹⁷

15. In the *Foreign Participation Order*, we concluded that national security, law enforcement, foreign policy, and trade policy considerations remained relevant to our public interest analysis of whether to grant or deny an international Section 214 authorization.¹⁸ We recognized that other government agencies have specific expertise in matters that may be relevant in particular cases and that our public interest analysis would benefit from input by those agencies. We therefore stated that we would continue to "consider any such legitimate concerns as we undertake our own independent analyses of whether grant of a particular application is in the public interest."¹⁹ We emphasized that we expected such concerns to be raised only in very rare circumstances, and that we would always undertake our own independent evaluation of each application.²⁰ Consistent with that policy, we conclude that these important interests should continue to be addressed, to the extent possible, by our procedures for authorizing providers of international telecommunications services. Therefore, the procedure we now adopt will afford Executive Branch agencies an appropriate opportunity to raise these considerations in the context of individual applications.²¹

16. Reviewing applications before authorization also will allow Commission staff to identify applications that are not complete,²² that do not qualify for streamlined processing, or that may raise

¹⁶ See Letter from Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, to Magalie Roman Salas, Secretary, FCC (Oct. 27, 1998); see also Letter from Louis J. Freeh, Director, Federal Bureau of Investigation, to William E. Kennard, Chairman, FCC (Nov. 20, 1998).

¹⁷ FBI Comments at 8.

¹⁸ See *Foreign Participation Order*, 12 FCC Rcd at 23,919 ¶ 61.

¹⁹ *Id.* at 23,919 ¶ 62.

²⁰ See *id.* at 23,919–21 ¶¶ 61–66.

²¹ See Letter from Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, to Ms. Magalie Roman Salas, Secretary, FCC (Mar. 8, 1999) (agreeing that a procedure that includes a 14-day waiting period after public notice would provide sufficient opportunity for review). We accept the FBI's assertion that the 14-day review period remains necessary and therefore cannot adopt the five-day period that PCIA requested.

²² For example, an application that does not include a certification that no party to the application is subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, see 47 C.F.R. § 63.18(j) (1997), or that lacks sufficient ownership information will not be accepted for filing.

extraordinary issues suggesting a need for public comment.²³ AT&T argues, for example, that even some small investments by foreign carriers with market power may require Commission scrutiny.²⁴ Our decision to continue to require submission of applications in advance also addresses concerns raised by some commenters that a post-commencement notification requirement might be taken less seriously by new carriers than a pre-certification application.²⁵ This procedure will help ensure that carriers are aware that they are subject to the Commission's rules regarding the provision of international telecommunications services. For all of these reasons, we conclude, pursuant to Section 11(a)(2) of the Communications Act, that the existing procedure is no longer "necessary in the public interest as the result of meaningful economic competition between providers of such service,"²⁶ and, pursuant to Section 11(b), we modify the procedure accordingly.

17. In the *Notice*, we tentatively concluded that, in light of our proposal for a blanket international Section 214 authorization, forbearance from requiring international Section 214 authorizations for any class of applicants pursuant to Section 10 of the Communications Act²⁷ was not the preferred approach.²⁸ Section 10 requires the Commission to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, if the Commission determines that all three of the following criteria are met:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.²⁹

²³ See *infra* para. 25.

²⁴ See AT&T Comments at 8-9.

²⁵ See FBI Comments at 6 n.12; AT&T Reply Comments at 5.

²⁶ 47 U.S.C. § 161(a)(2) (Supp. II 1996).

²⁷ 47 U.S.C. § 160 (Supp. II 1996).

²⁸ *Notice* ¶ 10 ("We tentatively conclude that granting a blanket Section 214 authorization would be a better approach than forbearing from requiring international Section 214 authorizations for any class of applicants.").

²⁹ 47 U.S.C. § 160(a)(1)-(3).

In determining whether the third prong of the forbearance standard is met, the Commission must consider whether forbearance from enforcing the provision will promote competitive market conditions, including the extent to which forbearance would enhance competition among providers of telecommunications services.³⁰

18. With regard to the first two prongs of the forbearance test, based on our drastic streamlining of the Section 214 process it is apparent that strict review of international Section 214 applications is not necessary to ensure reasonable and nondiscriminatory rates, terms, and conditions or to protect consumers. We also find that, except in limited circumstances of affiliations with dominant foreign carriers, enforcement of Section 214 is not necessary under the first two prongs. In evaluating the third prong — the public interest prong — there is considerable merit to arguments that forbearance from requiring international Section 214 authorizations would promote competitive market conditions and would enhance competition between carriers in the international services market. The absence of any waiting period, and the absence of any need for carriers to signal to competitors that they intend to provide international services, would allow carriers more easily to enter the market and challenge existing carriers' prices and service offerings. Nevertheless, we find that the extent to which forbearance, instead of the 14-day process we adopt here, would promote competition is substantially outweighed by the other public interest considerations discussed earlier.³¹ That is, an opportunity for prior streamlined review will enable Commission staff and applicable Executive Branch agencies to identify individual applications that, despite the existence of meaningful economic competition in the marketplace, may raise other public interest concerns. Those concerns include the national security and law enforcement considerations discussed above. In addition, as we stated in the *Notice*, it is important to continue to require that service be provided only pursuant to an authorization that can be conditioned or revoked for enforcement purposes.³² Given these other public interest considerations as well as the fact that we will be able to grant applications 14 days after public notice regardless of whether any comments are filed,³³ we conclude that forbearance would not be consistent with the public interest. Therefore, the third prong of the Section 10 forbearance standard is not satisfied.

2. Applications eligible for streamlined processing

19. We initially proposed that the blanket authorization procedure would apply only to a non-dominant carrier's provision of any international service on unaffiliated routes. This proposal was based on the tentative conclusion that our regulatory safeguards are sufficient so that in no case would

³⁰ 47 U.S.C. § 160(b).

³¹ See *supra* paras. 14–16.

³² A number of commenters supported this reasoning. See, e.g., Ameritech Comments at 4; MCI Comments at 3; Primus Comments at 2; WorldCom Comments at 1.

³³ We also note that, because most carriers will easily be able to obtain a global authorization pursuant to Section 63.18(e)(1) or (2), the filing of an application does not provide specific signals to competitors about the services to be offered or when service will be initiated. See *infra* Appendix B, § 63.18(e)(1), (2).

we need to deny, in the first instance, an application to provide services on unaffiliated routes. We sought comment on whether there was a smaller or larger class of carriers or services for which the blanket authorization would be appropriate, and we asked whether it would be possible to identify a class of affiliations that are equally unlikely to raise public interest concerns and, therefore, should not require prior Commission review.

20. Because we are not granting a blanket authorization, some of the reasons for limiting our proposal to unaffiliated routes are no longer of concern.³⁴ We now conclude that we will apply our revised streamlined procedure to all international Section 214 applications that currently qualify for streamlining, as well as to applications to serve affiliated routes where the affiliate has no facilities, or only mobile wireless facilities, at the foreign end of the route. It is, therefore, unnecessary for us to maintain three different authorization procedures depending on the type of international Section 214 authorization — one for non-streamlined applications, one for streamlined applications, and one for authorizations granted under a new blanket authorization procedure. This will substantially reduce administrative burdens and promote certainty and clarity.

21. We have often held that our primary concern in the context of international telecommunications is that a foreign carrier with market power on the foreign end of an international route may have the ability to leverage that market power into the U.S. market to the detriment of competition and consumers.³⁵ A carrier with market power on the foreign end of a route that owns a substantial equity interest in a U.S. carrier (or that is owned in substantial part by a U.S. carrier) may have the ability and incentive to discriminate in favor of that U.S. carrier and against other U.S. carriers. However, where the possibility of leveraging foreign market power to harm competition in the United States is very unlikely (e.g., because the applicant does not have an affiliation with a foreign carrier or because the affiliated foreign carrier clearly lacks market power), there generally is no need to review the competitive implications of the application.

22. In the past few years, we have developed a streamlined process for granting international Section 214 applications that generally are not expected to raise public interest concerns. The class of applications eligible for streamlined processing has consistently grown over those years, particularly with the implementation of the World Trade Organization (WTO) Basic Telecommunications Services Agreement and our revised competitive safeguards.³⁶ In determining the categories of applications to

³⁴ For example, although some assignments and transfers of control of international Section 214 authorizations are eligible for our current streamlined process, there is some question whether it would have been appropriate to include them within a blanket authorization procedure. Assignments and transfers of control may raise market-power issues that are not raised by new authorizations. Also, an assignment or transfer of control of an existing carrier should not be subject to the uncertainty that may be caused by relying solely on post-grant revocation and conditioning of authorizations.

³⁵ See, e.g., *Foreign Participation Order* ¶¶ 143–149.

³⁶ In the 1992 *International Services Order*, the Commission adopted rules that permitted streamlining for applications to resell the international switched or private line services of unaffiliated U.S. facilities-based carriers, except where the applicant proposed to resell private lines to a market in which an

which our newly revised streamlined authorization process should apply, we first conclude that any application that is *currently* eligible for streamlined processing³⁷ should be subject to our revised streamlined procedure in which public comment will not be sought, and petitions to deny will not be entertained, on competitive or other issues. Streamlined applications currently include:

- applications to serve unaffiliated routes;
- applications to serve affiliated routes where the affiliated foreign carrier has already been found to lack market power;
- applications to serve affiliated routes where the affiliated foreign carrier has less than a 50 percent market share in the international transport and local access markets in the destination country;
- applications to serve affiliated routes where the foreign affiliate is from a WTO country if the applicant seeks to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers;
- applications not otherwise eligible for streamlining if the affiliate is a foreign carrier in a WTO country and the applicant certifies that it will comply with our dominant carrier regulations for the affiliated route; and
- applications to assign or transfer control of an international Section 214 authorization where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing.

23. We have concluded in other proceedings that these classes of applications do not generally raise public interest concerns and, therefore, need not generally be subject to individual scrutiny and formal written orders. Our experience with our streamlined procedure has shown that

affiliated foreign carrier owned or controlled telecommunications facilities. See Regulation of International Common Carrier Services, *Report and Order*, 7 FCC Rcd 7331 (1992) (*International Services Order*). In the 1996 *Streamlining Order*, we expanded the class of carriers afforded streamlined processing to include carriers seeking to provide facilities-based service on unaffiliated routes, on routes where an affiliated foreign carrier operated solely as a reseller, and on routes where the Commission had already found the applicant's foreign affiliate to lack market power. See 1996 *Streamlining Order*, 11 FCC Rcd at 12,889 ¶ 12. In the 1997 *Foreign Participation Order*, we further expanded the class of applicants eligible to use the streamlined process to include (1) applications that demonstrate clearly that the foreign affiliate has less than a 50 percent market share in the international transport and local access markets in the destination country, (2) applications where the foreign affiliate is from a WTO country if the applicant requests authority to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers, (3) applications not otherwise eligible for streamlining if the affiliate is a foreign carrier in a WTO country and the applicant certifies that it will comply with our dominant carrier regulations for the affiliated route, and (4) applications to assign or transfer control of an international Section 214 authorization where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing. See *Foreign Participation Order*, 12 FCC Rcd at 24,032 ¶ 322.

³⁷ See Section 63.12 of the Commission's rules for a description of the types of international Section 214 applications currently eligible for streamlined processing. See also *infra* Appendix B, § 63.12.

applications eligible for streamlined processing are very rarely opposed, and those that are opposed are very rarely denied or conditioned.³⁸ Based on the record of this proceeding, we now find that the benefits of public comment on the competitive or other implications of these applications are substantially outweighed by the benefits of eliminating the possibility that such comment may render an application ineligible for streamlining.³⁹ Furthermore, including all streamlined applications within this new streamlined procedure will eliminate the need to maintain two or more different "streamlined" processes. We therefore conclude that the applications that would qualify for streamlined processing under our current rules do not generally pose such a risk to competition or raise such other public interest concerns that we should routinely seek public comment or entertain petitions to deny.

24. Included within this class of streamlined applications are some assignments and transfers of control of international Section 214 authorizations. An assignment or transfer of control may raise competitive or other issues that warrant Commission review, but the vast majority do not. In fact, our experience since the *Foreign Participation Order* has been that no assignment or transfer application that the staff has initially designated for streamlined processing has ever been opposed on the grounds that it would tend to create or reinforce market power or to facilitate its exercise. Furthermore, it is highly likely that any application that does raise competitive issues would also involve assignments or transfers of control of submarine cable landing licenses or Title III radio licenses. Any application that includes an assignment or transfer of a cable landing license or a Title III license will continue to be subject to public notice-and-comment procedures.

25. Although we conclude that these categories of applications generally should be subject to our revised streamlined procedure, we delegate to the International Bureau the authority to identify those particular applications that do warrant public comment and additional Commission scrutiny under current stated Commission policies. For example, additional scrutiny may be required where an application may present a significant potential adverse impact on competition,⁴⁰ or where an assignment or transfer of control could eliminate a significant current or future competitor.⁴¹ In fact, because this process gives the staff an opportunity to identify any extraordinary applications that may warrant public comment, we are able to include within this procedure a broader class of applications than if we were to adopt an approach, such as the proposed blanket authorization, that would have relied upon applicants to determine whether they qualify for the authorization. Absent such concerns,

³⁸ In fact, no application originally designated for streamlined processing has been denied, and very few have been conditioned in response to issues raised by commenters.

³⁹ For example, several commenters supported applying the proposed blanket authorization to routes where an affiliated foreign carrier has already been found to lack sufficient market power to affect competition adversely in the U.S. market. *See* Bell Atlantic Comments at 2-3; Cable & Wireless Comments at 4; GTE Comments at 2; Primus Comments at 2; Qwest Comments at 3; SBC Reply Comments at 5; Cable & Wireless Reply Comments at 6; *see also* Notice ¶ 9.

⁴⁰ *See Foreign Carrier Entry Order* ¶ 89.

⁴¹ *See generally* Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control, *Memorandum Opinion and Order*, 13 FCC Rcd 18,025 (1998).

we find that grant of Section 214 authority under these circumstances will serve the public interest, convenience, and necessity.

26. We note that the Commission's ex parte rules will continue to apply to any informal communications concerning streamlined applications between outside parties and Commission staff — that is, any such informal communications must be served on the applicant or filed with the Secretary of the Commission.⁴² Any such informal communications will not, however, result in an application being deemed ineligible for streamlined processing. An application can be removed from streamlined processing only in the sound discretion of Commission staff.

27. MCI opposed expanding the proposed blanket authorization to include any affiliated routes on the grounds that foreign affiliations raise unique concerns and the Commission should take an incremental approach.⁴³ Because we are not adopting the blanket authorization, MCI's concerns are not as relevant. The streamlined procedure we adopt will give us the opportunity to review all applications to serve affiliated routes prior to authorization. Part of the review process will include determining whether an applicant with foreign affiliations is eligible for streamlined processing either because the affiliate lacks market power or because the affiliate is in a WTO member country and the applicant agrees to be regulated as dominant.

28. We believe that it would be helpful to applicants if we can identify additional clearly defined classes of affiliations to which we will apply our streamlined procedure. It is important to draw bright lines so that it will be clear to potential applicants which routes are eligible for this streamlined process. We cannot, as some have suggested,⁴⁴ allow the applicants themselves to determine which affiliated foreign carriers lack market power. Market power is often a complex, fact-driven determination about which applicants, in good faith, and the Commission may draw different conclusions. Qwest suggests that the Commission consider establishing a procedure whereby carriers may file a petition for declaratory ruling that a foreign carrier lacks market power.⁴⁵ Accordingly, we will accept petitions for declaratory ruling that a foreign carrier lacks sufficient market power to affect competition adversely in the U.S. market. A declaratory ruling issued by the Commission may be cited in an applicant's Section 214 application for the purpose of establishing its eligibility for streamlined authorization on the affiliated route.

⁴² See 47 C.F.R. § 1.1206 (1997).

⁴³ See MCI Comments at 4; see also WorldCom Reply Comments at 1 (limiting the blanket authorization to unaffiliated routes "would create a clear, simple, bright-line standard"). *Contra* BellSouth Reply Comments at 4; SBC Reply Comments at 11-12.

⁴⁴ See, e.g., SBC Comments at 4-5; SBC Reply Comments at 5-6; see also Cable & Wireless Comments at 4 (asserting that the procedure should apply where an affiliated foreign carrier has "a demonstrable, insignificant market share but has yet to be held nondominant").

⁴⁵ Qwest Comments at 3.

29. We find that it is unlikely that a carrier that does not own or control telecommunications facilities in a proposed destination foreign market would have sufficient market power to affect competition adversely in the U.S. market.⁴⁶ As we recognized in the *International Services Order*, there appears to be no substantial risk of discrimination against unaffiliated U.S. carriers by a foreign carrier that does not own or control any telecommunications facilities in the affiliated market.⁴⁷ We have been presented with no case where we have found that a foreign carrier operating solely on a resale basis has sufficient market power to affect competition adversely in the U.S. market. We also clarify here our position that, as a general rule, the ownership or control of switching facilities does not by itself present a substantial risk of discrimination. We believe that market power will generally exist only if a carrier also owns or controls transport capacity. Thus, for example, an application from a carrier whose affiliate owns only switching facilities in a foreign market would be eligible for streamlined processing. We also have been presented with no case where we have found that a foreign carrier with only mobile wireless facilities (and no wireline facilities) has sufficient market power to affect competition adversely in the U.S. market. Our conclusion that both types of service providers are unlikely to raise market power concerns is supported by several commenters.⁴⁸ We reserve the right to revisit these conclusions if necessary, particularly if the use of mobile wireless units in foreign markets expands so rapidly that mobile wireless carriers may be able to exercise bottleneck control over terminating international telecommunications. The rule we now adopt will codify our findings and allow applicants to take advantage of our streamlined authorization procedure to become authorized to provide service between the United States and foreign points on a non-dominant basis where affiliated carriers have no facilities (other than switching facilities) or only mobile wireless facilities.⁴⁹

30. CompTel suggests that we include in our modified authorization procedures applications to serve affiliated routes where the affiliated foreign carrier does not provide international services to or from the United States.⁵⁰ As WorldCom and MCI point out, however, such a carrier may

⁴⁶ For this purpose, a carrier is said to own facilities in a foreign market if it holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in international or domestic telecommunications facilities (excluding switches). See *infra* Appendix B, § 63.12(c)(1)(iii).

⁴⁷ See *International Services Order*, 7 FCC Rcd at 7343 ¶ 20 n.41 (1992) (finding that "there appears to be no substantial risk of discrimination against unaffiliated U.S. carriers where the foreign carrier-affiliate does not own any telecommunications facilities in the foreign market").

⁴⁸ See, e.g., BellSouth Comments at 2; Cable & Wireless Comments at 4; CompTel Comments at 3; GTE Comments at 2; Primus Comments at 2 (stating that an affiliate with no facilities or only mobile wireless facilities poses little threat of foreign bottleneck control); AT&T Reply Comments at 4.

⁴⁹ See *infra* Appendix B, § 63.12(c)(1)(iii). Under our current rules, these applicants would likely be eligible for streamlined processing upon demonstrating that their affiliated foreign carriers lack 50 percent market share in the relevant affiliated markets. See 47 C.F.R. § 63.12(c)(1)(i); § 63.10(a)(3). This rule relieves applicants of the obligation to certify their affiliates' lack of 50 percent market share.

⁵⁰ CompTel Comments at 3.

nevertheless control bottleneck facilities in the foreign market (such as intercity or local exchange access facilities) that can be leveraged to harm competition in the U.S. market.⁵¹ GTE suggests that we include all affiliates that operate in WTO member countries that have liberalized in accordance with their market opening commitments.⁵² Adopting GTE's proposal either would require a lengthy and difficult fact-finding procedure to determine compliance with WTO commitments or would require leaving the determination to applicants' own subjective judgment.⁵³ Therefore, applicants falling into either the situation described by CompTel or that described by GTE will not be eligible for streamlined processing unless they meet one of the other criteria listed in Section 63.12.

31. We reject suggestions by AT&T and MCI to limit the applicability of our new procedures. AT&T argues that applications involving dominant foreign carrier interests of 10 percent and above should remain subject to our existing notice-and-comment procedures. Any noncontrolling interest of 25 percent or below falls outside the definition of *affiliation* that we have used since the 1995 *Foreign Carrier Entry Order*. AT&T is thus arguing that some interests that do not rise to the level of an affiliation should nevertheless remain subject to our current notice-and-comment procedures.

32. We have set our affiliation standard to the level of equity interest in a U.S. carrier below which, we have previously concluded, there is rarely a sufficient incentive to discriminate in favor of the affiliated carrier.⁵⁴ We have thus defined *affiliation* as a greater than 25 percent interest, or a controlling interest at any level, by a foreign carrier in a U.S. carrier or by a U.S. carrier in a foreign carrier.⁵⁵ In the *Foreign Participation Order*, we reaffirmed the 25-percent affiliation standard and further liberalized our policies by eliminating the requirement that authorized carriers submit prior notification to the Commission of new 10-percent ownership interests by foreign carriers. Now, authorized carriers must report an investment in or by a foreign carrier only if it results in an

⁵¹ See MCI Reply Comments at 3; WorldCom Reply Comments at 2.

⁵² GTE Comments at 3; *see also* SBC Reply Comments at 16.

⁵³ See AT&T Reply Comments at 5 n.3; MCI Reply Comments at 2; WorldCom Reply Comments at 1-2.

⁵⁴ See Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd 3873, 3903-07 ¶¶ 78-87 (1995) (*Foreign Carrier Entry Order*); *see also id.* at 3905 ¶ 85 (finding that the potential for anticompetitive conduct addressed by a 10 percent affiliation standard would not justify the detrimental impact such scrutiny would have on investment in U.S. carriers and the administrative burdens associated with its application).

⁵⁵ See 47 C.F.R. § 63.18(h)(1)(i) (1997); *infra* Appendix B, § 63.09(e). The definition also includes investments over 25 percent in a foreign carrier by any party that controls a U.S. carrier, and investments over 25 percent in a U.S. carrier by any party that controls a foreign carrier. There can also be an affiliation if two or more foreign carriers that are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of basic international telecommunications services in the United States invest in a U.S. carrier.

"affiliation," which generally means a controlling investment or an investment over 25 percent.⁵⁶ In that order, we found that "a foreign carrier's investment in an authorized carrier will very rarely raise any public interest issues unless it creates an affiliation."⁵⁷ AT&T points out that we found, in the *Foreign Carrier Entry Order* and the *Foreign Participation Order*, that we would continue to scrutinize investments lower than 25 percent that might nevertheless pose a significant potential impact on competition.⁵⁸ Based on our experience with the affiliation standard, however, we believe that these situations would be sufficiently rare⁵⁹ that they do not outweigh the public interest benefits of including all unaffiliated carriers within our revised streamlined authorization procedure.

33. We note, also, that we will continue to require applicants to identify all ten-percent-or-greater direct and indirect equity owners in their initial applications.⁶⁰ Furthermore, our definition of *affiliation* continues to include any controlling interest, even if that interest is below 25 percent.⁶¹ Finally, because Commission staff will have discretion to seek public comment on an extraordinary application that would otherwise qualify for streamlined processing,⁶² we are confident that the streamlined procedures we adopt here strike the appropriate balance between preventing anticompetitive effects and promoting swift and certain market entry.

34. MCI argues that the Commission should continue to require prior notice-and-comment procedures when an applicant seeks authority to provide international services from any region in the United States in which it has bottleneck control over local facilities. Such carriers, MCI argues, may have the ability to leverage their control over local facilities to harm competition in the U.S. international services market.⁶³

35. We are not persuaded that there is any public interest reason to adopt a general rule maintaining prior public notice-and-comment procedures for international Section 214 applications filed by local exchange carriers (LECs) that otherwise qualify for streamlined processing. We reach

⁵⁶ See *Foreign Participation Order*, 12 FCC Rcd at 24,035-36 ¶¶ 332-333.

⁵⁷ *Id.* at 24,035-36 ¶ 332.

⁵⁸ AT&T Comments at 2-6; see *Foreign Participation Order*, 12 FCC Rcd at 24,036 ¶ 332 n.679; *Foreign Carrier Entry Order*, 11 FCC Rcd at 3906 ¶ 89.

⁵⁹ To date the Commission has only found one instance where a less than 25 percent ownership interest posed a significant potential impact on competition. See *Sprint Corporation, Declaratory Ruling and Order*, 11 FCC Rcd 1850 (1996) (*Sprint Order*).

⁶⁰ See *infra* para. 76.

⁶¹ See *infra* para. 80.

⁶² See *supra* para. 25.

⁶³ See MCI Comments at 4.

this conclusion with respect to both the Bell Operating Companies (BOCs) and the non-BOC independent local exchange carriers (ILECs) for services originating in their local exchange service areas.

36. With respect to international Section 214 applications filed by the BOCs, we note that Section 271 of the Communications Act, as amended by the Telecommunications Act of 1996,⁶⁴ prohibits the BOCs from providing interLATA services that originate in their respective in-region states until the Commission finds that they have satisfied the requirements of that section. As we have previously recognized, international service is interLATA service subject to the requirements of Section 271.⁶⁵ A BOC will not, therefore, be permitted to take advantage of the streamlined procedure to obtain authorization to provide international services from any of its in-region states until the Commission approves its Section 271 application to provide interLATA services from that state. MCI has not presented any basis for us to conclude that, once we have made the requisite findings to support a grant of in-region interLATA authority, there will be any additional public interest issues of relevance for us to consider other than those raised by a BOC's affiliation with a foreign carrier in a proposed destination market or issues that may be raised by the Executive Branch. The sole public interest issue that MCI has raised to date with respect to BOC provision of international service (other than issues directly relevant to the Section 271 inquiry) is BOC "grooming" of international return traffic. MCI has expressed concern that, under such an arrangement, a BOC could negotiate to receive from its foreign carrier correspondents U.S.-inbound return traffic that terminates specifically in the BOC's in-region states. MCI claims that the BOC would thus keep any settlement payment and not have to pay terminating access charges to another local carrier.⁶⁶ As we recently noted in the *BOC Out-of-Region Interexchange Services Order*, the grooming described by MCI would be subject to prior Commission approval under our International Settlements Policy (ISP). As we also noted there, we have requested comment in another rulemaking proceeding whether grooming arrangements present a potential for anticompetitive effects, "particularly with respect to arrangements between foreign carriers with market power and incumbent local exchange carriers."⁶⁷ In the event MCI, or any other interested party, discerns a need for particular conditions to govern the BOCs' provision of international service (other than those already applied to them by the Communications Act and our

⁶⁴ 47 U.S.C. § 271 (Supp. II 1996).

⁶⁵ See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd 15,756 (1997), *recon.*, 12 FCC Rcd 8730 (1997), *recon. pending*.

⁶⁶ See Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, *Order on Reconsideration*, FCC 98-272, ¶¶ 11-13 (rel. Oct. 20, 1998) (*BOC Out-of-Region Interexchange Services Order*).

⁶⁷ See *id.* ¶ 13 (citing 1998 Biennial Regulatory Review — Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates, IB Docket No. 98-148, *Notice of Proposed Rulemaking*, 13 FCC Rcd 15,320, ¶ 43 (1998)).

rules), we believe that other proceedings provide a better opportunity for developing a full record on the merits of imposing additional regulations.

37. With respect to the non-BOC ILECs, we have issued numerous grants of international Section 214 authority to these carriers, and their applications have rarely been opposed for reasons related to an ILEC's control of local exchange and exchange access facilities.⁶⁸ In the highly unusual circumstance of a contested application, petitioners' allegations have focused primarily on carrier practices that are addressed by statutory obligations under Title II of the Communications Act and existing rules and regulations implementing those provisions of the Act.⁶⁹ We see no reason to maintain notice-and-comment procedures for all ILEC applications that would otherwise be streamlined when we have ample enforcement authority over these carriers' provision of interstate access services and facilities. We also find that our enforcement procedures are the more appropriate forum for addressing allegations of ILEC misconduct because any such misconduct is likely to affect interexchange carrier provision of international *and* interstate, domestic interexchange service.

38. We sought comment on whether our conclusions should apply equally to commercial mobile radio service (CMRS) licensees. PCIA and others argue that the Commission should forbear altogether from imposing Section 214 requirements for CMRS operators' provision of international service on unaffiliated routes and for CMRS operators' resale of unaffiliated U.S. carriers' services on all routes.⁷⁰ However, the public interest concerns discussed above as reasons for maintaining prior review of all international Section 214 applications⁷¹ apply equally to CMRS licensees. Therefore, for the same reasons and in the same manner as for other classes of carriers, and pursuant to Section 11(a)(2), we find that our existing Section 214 authorization procedures as applied to CMRS providers are no longer necessary in the public interest as a result of meaningful economic cooperation between providers. Also, we find that the modified procedure that we adopt pursuant to Section 11(b) should apply equally to CMRS providers.

⁶⁸ *But see* Telefonica de Puerto Rico, Inc., File Nos. ITC-96-214 and EID-735, *Order, Authorization and Certificate*, 13 FCC Rcd 12,344 (Int'l Bur. 1998) (*TPRI* proceeding).

⁶⁹ *See generally id.* In the *TPRI* proceeding, one petitioner also raised issues relevant to the Cable Landing License Act, 47 U.S.C. §§ 34-39. The International Bureau considered these issues in both the *TPRI* proceeding and in the context of the same petitioner's request that we require the Puerto Rico Telephone Company to divest its interests in the corporation that operates the Isla Verde cable landing station in Puerto Rico. *See* Telefonica Larga Distancia de Puerto Rico et al., File Nos. SCL-92-002, SCL-95-008, SCL-95-012, *Order*, 13 FCC Rcd 13,175 (Int'l Bur. 1998).

⁷⁰ *See* PCIA Comments at 3-13; *see also* GTE Comments at 4; Iridium Comments at 3; SBC Comments at 7-8; Bell Atlantic Reply Comments at 5.

⁷¹ *See supra* paras. 14-16.

39. We also find that our decision not to forbear pursuant to Section 10 from requiring international Section 214 authorizations for any class of applicants⁷² applies equally to CMRS providers. We note that competition among CMRS providers has increased significantly,⁷³ and forbearance from requiring Section 214 authorizations for the provision of international services by CMRS licensees might further enhance competition in this market by allowing CMRS licensees to begin providing international services without obtaining any further authorizations. Nevertheless, the extent to which forbearance would enhance competition is substantially outweighed by the public interest considerations discussed earlier.⁷⁴ In particular, prior review is needed to address the national security and law enforcement concerns raised by the Executive Branch. We note that the streamlined authorization procedure and other deregulatory initiatives that we adopt in this order will relieve CMRS carriers of substantial regulatory burdens. Almost any CMRS carrier that plans to provide international services will be able to obtain a global authorization 14 days after public notice regardless of whether public comment has been filed. A global authorization, moreover, does not provide specific signals to competitors about the services to be offered or when service will be initiated.⁷⁵

40. Accordingly, we find that the public interest, convenience, and necessity would be served by authorizing telecommunications carriers to provide international service pursuant to the procedures and standards described in this section and codified in Sections 63.12 and 63.20 of the Commission's rules.

B. Forbearance from *Pro Forma* Assignments and Transfers of Control

41. In the *Notice*, we proposed to allow carriers to undertake *pro forma* assignments and transfers of control of international Section 214 authorizations without Commission approval. We proposed to create a new rule to define *pro forma* for this purpose as a transaction that fits within certain defined categories and results in no substantial change in ownership or control of the carrier or

⁷² See *supra* paras. 17-18.

⁷³ Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, FCC 99-19, ¶ 19 & Section III.B.3 (rel. Feb. 9, 1999).

⁷⁴ See *supra* paras. 14-16.

⁷⁵ See *infra* Appendix B, § 63.18(e)(1)-(2) (applications for global facilities-based and global resale authority); §§ 63.22-.23 (rules applicable to facilities-based and resale carriers).

its authorization.⁷⁶ We proposed to require Commission notification within 30 days of *pro forma* assignments but not to require any notification of *pro forma* transfers of control.⁷⁷

42. We tentatively concluded in the *Notice* that forbearance from reviewing *pro forma* assignments and transfers of control would meet the forbearance standard in Section 10 of the Communications Act.⁷⁸ No commenter disputes this tentative conclusion,⁷⁹ and several parties express support.⁸⁰ Regulatory review of these transactions yields no significant public interest benefits, but may delay or hinder transactions that could provide substantial financial, operational, or administrative benefits to carriers. We therefore adopt our proposal to forbear from reviewing *pro forma* assignments and transfers of control of international Section 214 authorizations for the reasons expressed in the *Notice*.⁸¹

43. We also adopt our tentative conclusions that post-consummation notification should be required for *pro forma* assignments but not for transfers of control. Ameritech agrees with our tentative conclusion that post-consummation notification is necessary for assignments and is not unduly burdensome.⁸² Primus argues that there is no value in requiring notification of *pro forma* assignments

⁷⁶ See *Notice* Appendix A, § 63.24; see also *infra* para. 45.

⁷⁷ An assignment is a transaction in which a Commission authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted. A transfer of control is a transaction in which the Commission authorization remains held by the same entity, but there is a change in the entities that control the authorized carrier.

⁷⁸ 47 U.S.C. § 160 (Supp. II 1996).

⁷⁹ The FBI initially objected to this proposal, see FBI Comments ¶¶ 16–22, but withdrew its opposition by letter after discussions with Commission staff. The letter stated that the FBI "does not object to this change where the assignments or transfers involve applications where there will be no ultimate ownership change of the entities involved." Letter from Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 4 (Oct. 27, 1998); see also DoD Comments at 5 ("DoD does not object to this streamlining effort so long as these Section 214 authorizations could in a convenient fashion be subject to post-grant conditions or revocations under appropriate circumstances."). Although some insubstantial change in ownership can result from a *pro forma* transaction, the degree of change that can result is no greater than other transactions that are not, and have never been, subject to Commission review. For example, small, noncontrolling ownership interests can change hands without triggering any FCC reporting requirements.

⁸⁰ See, e.g., Bell Atlantic Comments at 4; DT Comments at 4; FaciliCom Comments at 2; GTE Comments at 5; Iridium Comments at 4; MCI Comments at 5; PCIA Comments at 2 n.3; Primus Comments at 2; WorldCom Comments at 2.

⁸¹ See *Notice* ¶¶ 15–17.

⁸² See Ameritech Comments at 7.

and that such a requirement would impose an unnecessary burden.⁸³ As we stated in the *Notice*, we believe that it is important to maintain complete and current records of the identities of authorized international carriers.⁸⁴ As we reduce barriers to market entry, we must ensure that we are able to enforce our post-entry rules, and the ability to identify carriers providing service in the market is important to those enforcement efforts. No such identity change results from a *pro forma* transfer of control, but it does result from an assignment. The carriers' notifications will be used only to ensure that there is an accurate public record of the identity of every authorized carrier. These records may be necessary, for example, to verify whether carriers are submitting the reports that are required by Commission rules. We will periodically issue public notice of these assignments.

44. Primus suggests, in the alternative, that we require notification of assignments to be included in other reports routinely filed with the Commission, such as the annual traffic-and-revenue report required by Section 43.61 of the Commission's rules. Requiring notification of assignments in other routine reports would allow as much as a year to pass before the information is available to the Commission and to the public. In order to verify compliance with reporting requirements, and in order to maintain more current records, we believe that it would better serve the public interest to require notification within 30 days of consummation of the assignment. We therefore adopt our tentative conclusion.

45. Primus seeks clarification that the new rule would apply to "(1) assignments between a parent and subsidiary even if intervening subsidiaries exist, (2) assignments and transfers arising out of the reincorporation in a new state, (3) mere name changes, and (4) changes in the form of the business entity (such as change from a partnership, an LLC or LLP to a corporation) as long as the underlying controlling ownership does not change." We agree that such transactions are "nonsubstantial" and should not require prior Commission approval. To address the first situation, we will insert "direct or indirect" in paragraph (a)(5) of Section 63.24. We will insert a parenthetical in paragraph (a)(4) to address the second and fourth situations. The third situation, a name change, is not an assignment or transfer of control, and it will be addressed by Section 63.21(j), which will provide that an authorized carrier may change its name without prior approval but shall notify the Commission within 30 days.

C. Provision of Service by Wholly-Owned Subsidiaries

46. In the *Notice*, we proposed to allow any authorized international carrier to provide its authorized services through any wholly-owned subsidiaries.⁸⁵ Our proposed rule would state that an international Section 214 authorization applies to the entity holding the authorization, as well as any wholly-owned subsidiaries. We emphasized that this provision should not be used to circumvent any structural-separation provision of the Commission's rules and sought comment on whether it would do so.

⁸³ See Primus Comments at 3.

⁸⁴ See *Notice* ¶ 19.

⁸⁵ See *id.* ¶ 22.

47. Commenters expressed widespread support for this proposal.⁸⁶ As Iridium stated, "[f]or a variety of commercial reasons, it is customary for a provider of international telecommunications services to operate through subsidiaries in individual markets."⁸⁷ No commenter suggested that such a provision would defeat any of the Commission's structural-separation requirements,⁸⁸ and we believe that the rule as proposed would not do so. We reiterate that commercial reasons such as those cited by Iridium would not raise any new issues suggesting a need for Commission review if the subsidiaries are subject to exactly the same ownership. A wholly-owned subsidiary could have no affiliations⁸⁹ that its parent does not have, and review of its application would provide no new information for the purpose of a national security, law enforcement, or foreign policy evaluation. We therefore adopt our proposal, with the modifications discussed below, as a new paragraph (i) of Section 63.21.

48. The rule we adopt will, however, require any subsidiary operating pursuant to its parent's authorization to notify the Commission by letter within 30 days after beginning to provide service. As we discuss elsewhere in this Report and Order,⁹⁰ it is important to our enforcement efforts to be able to identify every company that is authorized to provide international telecommunications services. This notification requirement does not add a significant burden and will not significantly delay the provision of new services. In response to Primus's request, we confirm that the provision that we now adopt applies even when the subsidiary uses a different operating name.⁹¹

49. Primus also seeks confirmation that a subsidiary may be held indirectly through intervening 100-percent-owned entities and still operate pursuant to the authority of its parent.⁹² We confirm that this would be our policy and clarify Section 63.21(i) by referring to "direct or indirect" subsidiaries.

50. We emphasize that allowing authorized international carriers to provide international services through wholly-owned subsidiaries must not be used to circumvent any structural separation that may be required by any current or future Commission rules, such as the requirement in Section

⁸⁶ See, e.g., Bell Atlantic Comments at 5; Cable & Wireless Comments at 5; GTE Comments at 5; Iridium Comments at 5; MCI Comments at 6; Primus Comments at 4; WorldCom Comments at 3.

⁸⁷ Iridium Comments at 5.

⁸⁸ See BellSouth Comments at 3; MCI Comments at 6.

⁸⁹ See 47 C.F.R. § 63.18(h)(1)(i) (1997) (defining affiliation for this purpose); *infra* Appendix B, § 63.09(e) (same).

⁹⁰ See *supra* para. 43 (notification of *pro forma* assignments); *infra* para. 83 (notification of name changes).

⁹¹ Primus Comments at 4.

⁹² *Id.*

63.10 that carriers regulated as dominant for the provision of service on an international route must provide service through an entity that is separate from its affiliated foreign carrier. Carriers should also be advised that Section 63.21(i) authorizes only 100-percent-owned subsidiaries, and that if, at any time, such a subsidiary is no longer 100-percent owned by the authorized carrier, it may not operate without first obtaining its own authorization pursuant to Section 63.18.

51. Primus also asks that we clarify whether separate subsidiaries will continue to be required to maintain separate tariffs or to file concurrences in their parent's tariffs. Primus "recommends that carriers be given the choice to maintain separate tariffs, concur in an affiliate's tariff, or share in an affiliate's tariff by including sections in the tariff setting forth rates and other terms specific to each operating subsidiary's offerings."⁹³ Part 61 of the Commission's rules includes two rules permitting common carriers (which would include affiliates) to concur in another common carrier's tariff: (1) Concurrences are permitted for "through" services that are jointly provided by two or more carriers. In this case, the issuing carrier's⁹⁴ tariff can either specify the concurring carrier's *rates and regulations* or specify where those *rates and regulations* can be found.⁹⁵ (2) Concurrences for other purposes are permitted when an issuing carrier's tariff specifies the concurring carrier's *rates and points of service* if they are different from the issuing carrier's *rates and points of service*.⁹⁶ We believe that these rules provide sufficient flexibility for wholly-owned subsidiaries operating pursuant to their parents' authorizations. Primus does not explain its "sharing" proposal in detail sufficient to enable us to discern the difference, if any, between its proposal and the concurrences permitted under Part 61 of our rules.

52. GTE asks that the Commission clarify that any reporting could be consolidated into a single filing.⁹⁷ GTE's proposal may have merit with respect to certain reporting requirements, but the proposal is not specific enough, nor is the record sufficiently developed, to address GTE's proposal here. We direct the Common Carrier Bureau and International Bureau to consider whether revisions to the filing manuals for Sections 43.61 and 43.82 are necessary to clarify the circumstances in which carriers may consolidate their international traffic and revenue reports and circuit status reports. GTE is also free to raise this issue in other relevant proceedings.

53. Other commenters urge us to expand the proposal so that any *commonly-owned* affiliates and subsidiaries — including "parent" companies and "sister" subsidiaries — could share a single

⁹³ *Id.*

⁹⁴ The "issuing carrier" is the carrier filing the tariff. 47 C.F.R. § 61.3(r).

⁹⁵ *Id.* § 61.134.

⁹⁶ *Id.* § 61.135.

⁹⁷ GTE Comments at 5; *see also* SBC Reply Comments at 17.

Section 214 authorization.⁹⁸ Cable & Wireless's proposal would allow a sister subsidiary to obtain a *separate* authorization by filing a notification letter listing the Commission orders upon which it is relying. Cable & Wireless states that the notification letter would raise no new issues and could be granted by Commission staff simply by stamping the letter granted and not issuing a formal written order.⁹⁹ In opposition, AT&T argues that these proposals would potentially extend Section 214 authorizations to large numbers of foreign carriers in different countries without any review of the separate issues that may be raised by their authorization.¹⁰⁰

54. We conclude that no new issues are raised when a company with exactly the same ownership as an authorized carrier seeks Commission authorization to provide the same international services. We do, however, find that a separate authorization should be required when the company seeking authority to provide service is not controlled by the carrier whose authorization it seeks to use. We therefore decline to include so-called "sisters" and "parents" within the scope of Section 63.21(i). However, we will grant some regulatory relief by allowing any entity that seeks authority to provide the same international services, subject to the same conditions, that have already been authorized for a company with the same ownership to utilize the streamlined authorization procedure; it would therefore not be subject to public comment.¹⁰¹

55. Carriers should also be aware that they may take advantage of the *pro forma* assignment procedure to assign an authorization to a parent company. Following the assignment, the originally authorized carrier and any other wholly-owned subsidiaries of the parent can operate pursuant to Section 63.21(i).

56. GTE asks us to permit partnerships in which the carrier has a controlling interest to be able to operate pursuant to the carrier's authorization.¹⁰² We agree with MCI that a controlling interest that does not amount to 100-percent ownership may raise additional issues,¹⁰³ such as additional

⁹⁸ See, e.g., GTE Comments at 5; Iridium Comments at 5; MCI Comments at 6; SBC Reply Comments at 16-17; WorldCom Comments at 3.

⁹⁹ Cable & Wireless Comments at 5.

¹⁰⁰ AT&T Reply Comments at 7.

¹⁰¹ We note that this rule will allow subsidiaries and "sister" corporations of Cable & Wireless, Inc., to become authorized to provide services pursuant to authorizations that were granted before our 1995 *Foreign Carrier Entry Order*. See TDX Systems, Inc., File No. ITC-86-108, *Order, Authorization and Certificate*, Mimeo No. 6609, 1986 WL 290969 (rel. Sept. 2, 1986). We see no reason as a general matter to restrict Cable & Wireless's existing authorizations to any particular corporate entity so long as any entity providing service pursuant to those authorizations has the same ultimate ownership.

¹⁰² GTE Comments at 5.

¹⁰³ MCI Reply Comments at 5.

foreign affiliations or minority ownership or beneficial interest by persons or entities who are barred from holding a Commission authorization.

D. Use of Non-U.S.-Licensed Facilities

57. In the *Notice*, we proposed to allow any carrier authorized to provide facilities-based services to use any undersea cable system to provide its authorized services.¹⁰⁴ Several commenters expressed support for this proposal,¹⁰⁵ and no commenter opposed it.

58. Under our current rules, a carrier authorized to provide "global" facilities-based services may use any facilities in its provision of its authorized services except as provided on the "Exclusion List for International Section 214 Authorizations," a list maintained by the International Bureau. A current version of the exclusion list is included as part of each public notice that lists granted streamlined Section 214 applications and is available in the International Bureau's Reference Center and on the Commission's Web site.¹⁰⁶ A carrier with a global facilities-based authorization may not use non-U.S.-licensed facilities unless and until it has received specific prior approval or the Commission generally approves the use of those facilities and so indicates on the exclusion list. In the *Notice*, we tentatively concluded that there is no longer any reason for a blanket prohibition on the use of non-U.S.-licensed undersea cable systems.

59. Since we adopted this exclusion-list policy in the *1996 Streamlining Order*,¹⁰⁷ no one has brought to our attention any public interest reason to prohibit the use of any particular cable systems for the provision of U.S. international traffic. Indeed, as the International Bureau stated in its *Exclusion List Order*,¹⁰⁸ the Commission adopted the exclusion list as a procedural mechanism to enable carriers with global authority to use non-U.S.-licensed facilities. The Bureau encouraged carriers negotiating agreements to acquire capacity on non-U.S.-licensed facilities that did not appear on the exclusion list to promptly request that the facility be added, and it anticipated that the procedure would be expeditious.¹⁰⁹ Parties supporting our tentative conclusion state that permitting the use of non-U.S. licensed cable systems as part of a carrier's global facilities-based authorization would increase the number of facilities options available to carriers. Tyco states that the current rule is

¹⁰⁴ *Notice* ¶¶ 23–28.

¹⁰⁵ See, e.g., Ameritech Comments at 7–8; DT Comments at 4; FaciliCom Comments at 2–3; MCI Comments at 7; Primus Comments at 5; Tyco Comments at 2; WorldCom Comments at 4; AT&T Reply Comments at 6.

¹⁰⁶ See <<http://www.fcc.gov/ib/td/pf/exclusionlist.html>>.

¹⁰⁷ See *1996 Streamlining Order*, 11 FCC Rcd at 12,892–93 ¶¶ 16–19.

¹⁰⁸ *Streamlining the International Section 214 Authorization Process and Tariff Requirements — Exclusion List*, IB Docket No. 95-118, *Order*, DA 96-1205 (Int'l Bur., rel. July 29, 1996).

¹⁰⁹ *Id.* ¶ 7.

harmful to carriers and cable owners because it limits choices and discourages undersea cable competition. Tyco also argues that the current rule is inconsistent with the current international regulatory environment and commercial reality. Tyco argues that the current rule distorts carriers' incentives in obtaining cable capacity and achieves no clear public interest benefit.¹¹⁰

60. For these reasons and those discussed in the *Notice*,¹¹¹ we now amend Sections 63.18(e)(1) and 63.15(a) of our rules and remove all non-U.S.-licensed undersea cable systems from the exclusion list.¹¹² Any facilities-based carrier will be allowed to use any foreign cable system to provide its authorized international services.¹¹³ If it becomes necessary to prohibit the use of any specific cable system (whether or not it lands on U.S. shores), we may amend the exclusion list. We will amend the exclusion list only after providing public notice and an opportunity for affected parties to comment on the amendment.¹¹⁴

61. The FBI objected to our use of the word "presumption" in describing this proposal and argued that "no presumption issue should be considered or decided in this docket."¹¹⁵ We did not intend to propose that any new substantive presumption would apply in determining whether the use of any particular cable system would be prohibited, and we do not adopt any such presumption.

62. In the *Notice*, we tentatively concluded that we should *not* modify our current practice of requiring specific Section 214 authority for the use of non-U.S.-licensed satellite systems unless otherwise indicated on the exclusion list.¹¹⁶ We tentatively concluded that a decision whether to permit a particular facilities-based carrier to use a non-U.S.-licensed satellite system or whether

¹¹⁰ Tyco Comments at 2.

¹¹¹ See *Notice* ¶¶ 23-28.

¹¹² See *infra* Appendix C (Exclusion List for International Section 214 Authorizations, as amended).

¹¹³ Notwithstanding this change, no carrier may use any undersea cable system that lands on the shores of the United States unless the cable system has a valid cable landing license pursuant to the Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39, and 47 C.F.R. § 1.767.

¹¹⁴ See *1996 Streamlining Order*, 11 FCC Rcd at 12,893 ¶ 18. If the President issues an Executive Order to prohibit or restrict service to a particular country or to prohibit or restrict use of particular facilities, however, we will amend the exclusion list and issue a public notice to that effect *without* opportunity for comment or hearing. See, e.g., International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706 (1994) (providing that, where a foreign country poses a threat to national security, the President has authority to investigate, regulate, or prohibit commercial and financial activities with that country).

¹¹⁵ See FBI Reply Comments at 9; *Notice* ¶ 25 ("We believe that the presumption should now favor permitting the use of non-U.S.-licensed cable systems.").

¹¹⁶ *Notice* ¶ 28.

generally to permit use of a non-U.S.-licensed satellite system by all facilities-based carriers should be made pursuant to the policies adopted in our *DISCO II Order*.¹¹⁷ PanAmSat agrees that applications to use non-U.S.-licensed satellites should continue to be evaluated pursuant to the policies adopted in the *DISCO II Order*.¹¹⁸ WorldCom and MCI disagree.¹¹⁹ They suggest that, once the Commission authorizes the use of a particular satellite system by authorized carriers for service to specified points, the Commission should place that satellite system on a list and allow any authorized carrier to use that system in providing its authorized services to those same points without further Section 214 authorization and without amending its Title III licenses, as long as the satellite system is within the orbital arc and frequency bands of the carrier's authorized earth stations. PanAmSat objects to this proposal, arguing that applications to use non-U.S.-licensed satellite systems raise numerous policy issues that should be evaluated under the procedures adopted in *DISCO II*.¹²⁰ The FBI also states that "non-U.S.-licensed satellite systems remain a matter of sensitivity requiring ongoing Section 214 *prior* review and authorization."¹²¹

63. We conclude that we should not at this time change our policy regarding the use by authorized carriers of non-U.S.-licensed satellite systems on this record. Although, on a more developed record, we might be able to conclude that the Section 214 inquiry is redundant with the Title III analysis that is applied to applications to obtain an earth station license to communicate with a non-U.S.-licensed satellite, we believe it would be inappropriate to draw that conclusion at this time, particularly in light of the possible national security or law enforcement issues that may be raised by the use of non-U.S.-licensed satellites. Therefore, we will continue to require specific Section 214 approval for the use of a non-U.S.-licensed satellite system.

E. Procedures for Authorizing Submarine Cable Systems

64. Under our current rules, applicants for common carrier cable landing licenses are required to file two applications: a cable landing license application under Section 1.767 of the Commission's rules¹²² and a Section 214 application for the construction of new lines under Section 63.18(e)(6) of

¹¹⁷ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order*, 12 FCC Rcd 24,094 (1997) (*DISCO II Order*).

¹¹⁸ PanAmSat Comments at 2.

¹¹⁹ WorldCom Comments at 7; MCI Reply Comments at 6.

¹²⁰ PanAmSat Reply Comments at 1-2.

¹²¹ FBI Comments at 14.

¹²² 47 C.F.R. § 1.767 (1997) (adopted pursuant to the Submarine Cable Landing License Act and Executive Order No. 10,530).

the Commission's rules. The Submarine Cable Landing License Act,¹²³ which the Commission is charged with executing,¹²⁴ requires that a cable landing license be obtained for any undersea cable directly or indirectly connecting the United States with any foreign country. To streamline this process, we proposed to eliminate the need to apply for separate Section 214 authority to build a new common carrier system by including the authorization to construct new lines among the rights granted to all authorized facilities-based carriers.¹²⁵ We noted that this proposal may necessarily be subject to a change in application fees, which are set by statute and cannot be changed by the Commission.¹²⁶

65. This streamlining measure was supported by a number of parties.¹²⁷ MCI and Tyco agree that a combined authorization process would better serve the public interest. For instance, MCI argues that the cable landing license application itself provides all the information needed by the Commission to determine whether construction and operation of a new submarine cable will be in the public interest. Likewise, Tyco finds the current process "onerous and lengthy" and claims that it deters investors in the systems until they are licensed because carriers must compile extensive information in order to obtain an international facilities-based authorization and then must regenerate that information to obtain Section 214 authority for new lines.¹²⁸ WorldCom agrees that there is no reason that the filing requirements should be different for common carrier applications than for non-common carrier applications.¹²⁹ In addition, DoD believes that the cable landing license application is sufficient for conducting a pre-grant review.¹³⁰

66. Currently, the application fee for a non-common carrier cable landing license is \$12,975, while the fee for a common carrier cable landing license is only \$1,310.¹³¹ The application fee for a Section 214 authorization for "overseas cable construction" is \$11,665, bringing the total of the

¹²³ 47 U.S.C. §§ 34-39 (1994).

¹²⁴ See Exec. Order No. 10,530, *reprinted as amended in* 3 U.S.C. § 301 app. at 459-60 (1994) (delegating to the Commission the President's authority to issue cable landing licenses).

¹²⁵ See Notice ¶¶ 29-33.

¹²⁶ See *id.* ¶ 33; see also 47 U.S.C. § 158 (setting application fees and directing the Commission to adjust those fees to reflect changes in the Consumer Price Index).

¹²⁷ DT Comments at 4; GTE Comments at 5; MCI Comments at 7; Primus Comments at 5; Tyco Comments at 5; AT&T Reply Comments at 6.

¹²⁸ Tyco Comments at 5-6.

¹²⁹ WorldCom Comments at 4.

¹³⁰ DoD Comments at 7.

¹³¹ See Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1107 of the Commission's Rules, GEN Docket No. 86-285, *Order*, FCC 98-87 (rel. May 15, 1998).

application fees for a common carrier submarine cable to \$12,975. We believe that the fact that the total fees are the same is not happenstance, but is a good indication of congressional intent that the application fees be the same whether the applicant intends to construct a common carrier or non-common carrier cable system. There has been no change in the application fees since we issued the *Notice*, and no commenter suggested a way to reconcile the fee disparity with elimination of the Section 214 application. Therefore, in order to fulfill the intent of Congress to collect comparable application fees for comparable applications, we do not adopt our proposal. We direct our Office of Legislative and Intergovernmental Affairs to submit a legislative request to Congress recommending that there be only one application fee for cable landing licenses and that the separate application fee for "overseas cable construction" be eliminated.¹³² In the meantime, we encourage applicants for common carrier cable landing licenses to file a single application seeking authority under both the Cable Landing License Act and Section 214 of the Communications Act. Information required in each application need not be repeated. The applicant should submit both of the applicable fees with its consolidated application.

67. We also sought comment on amending our environmental rules to reflect a new categorical exclusion for the construction of new submarine cable systems.¹³³ As we stated in the *Notice*, the Commission concluded in 1974 that any action on an application for a submarine cable landing license would be categorically excluded from environmental processing.¹³⁴ When we changed the format of our environmental rules in 1984, we did not include an exemption for submarine cable facilities.¹³⁵ In our 1974 decision, we noted that, "[a]lthough laying transoceanic cable obviously involves considerable activity over vast distances, the environmental consequences for the ocean, the ocean floor, and the land are negligible." We went on to describe how, "[i]n shallow water, the cable

¹³² See 47 U.S.C. § 154(k)(4) (directing the Commission to make "specific recommendations to Congress as to additional legislation which the Commission deems necessary or desirable").

¹³³ See 47 C.F.R. § 1.1307 (1997) (facilities that may significantly affect the environment for purposes of the environmental processing requirements include, e.g., facilities that are to be located in an officially designated wilderness area, facilities that are to be located in an officially designated wildlife preserve, and facilities that may affect properties that are listed or are eligible for listing in the National Register of Historic Places). In the *Notice*, we tentatively concluded that, in order to ensure compliance with environmental statutes, we must limit the proposed authorization to construct new lines by stating that it would not have authorized the construction or extension of lines that may have a significant effect on the environment as defined in our environmental rules. We then would have found that, as a rule, construction of submarine cable systems does not have a significant effect on the environment. Although we are not adopting our proposal to authorize the construction of new lines, adopting this categorical exemption to our environmental rules will nevertheless relieve applicants of an unnecessary burden.

¹³⁴ See Implementation of the National Environmental Policy Act of 1969, *Report and Order*, 49 F.C.C.2d 1313, 1321 ¶ 17 (1974) (*NEPA Implementation*).

¹³⁵ See Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality, *Report and Order*, 60 R.R.2d 13 (1986).

is trenched and immediately covered; in deep water, it is simply laid on the ocean floor"; and "[i]n the landing area, it is trenched for a short distance between the water's edge and a modest building housing facilities."¹³⁶

68. In the *Notice*, we tentatively concluded that, as we originally decided in 1974, the construction of new submarine cable systems, individually and cumulatively, will not have a significant effect on the environment and therefore should be expressly excluded from our environmental processing requirements. We also specifically requested comment on the proposed addition to Note 1 of Section 1.1306 to reflect categorical exclusion of the construction of new submarine cable systems. We sent a copy of the *Notice* to the Council on Environmental Quality. No party commented on these proposals.

69. Seeing no opposition to our proposal, we adopt it as outlined in our *Notice*. We will add a note to Section 1.1306 to reflect a categorical exclusion for the construction of new submarine cable systems.¹³⁷ An applicant for a cable landing license may cite this note for the proposition that action on its application is categorically excluded from environmental processing.

70. In its comments, DoD identifies another way to expedite the process of granting cable landing licenses. DoD states that its review of these applications would be expedited if each applicant were required to identify the owners of the cable landing station to be utilized and each owner's citizenship.¹³⁸ We find that, because it would expedite Executive Branch review, it would serve the public interest to amend our rules to require an applicant for a cable landing license to provide ownership information with respect to the cable landing station when it provides the specific information about the proposed cable system's U.S. landing points. We therefore amend Section 1.767(a)(5) accordingly.

F. Authorization Procedure for Switched Services over Private Lines

71. In the *Notice*, we proposed to create a new Section 63.16 to contain the Commission's rules on the provision of switched basic telecommunications services using international private lines interconnected to the public switched network (sometimes called "international simple resale" or "ISR").¹³⁹ We also proposed to simplify the procedure for adding to the list of foreign destinations to

¹³⁶ *NEPA Implementation*, 49 F.C.C.2d at 1321 ¶ 17.

¹³⁷ *See infra* Appendix B, § 1.1306 Note 1 (to be codified at 47 C.F.R. § 1.1306 Note 1).

¹³⁸ DoD Comments at 7.

¹³⁹ *See Notice* ¶ 41; *id.* Appendix A, § 63.16. *See generally Foreign Participation Order*, 12 FCC Rcd at 23,924-31 ¶¶ 72-86; 1998 Biennial Regulatory Review — Reform of the International Settlements Policy and Associated Filing Requirements, *Notice of Proposed Rulemaking*, 13 FCC Rcd 15,320 (1998). Although the provision of switched services over international private lines interconnected to the public switched network at both ends is sometimes called "international simple resale," when we authorize carriers to provide ISR, we allow carriers to use both facilities-based and resold private lines

which any authorized carrier may carry switched services over its authorized facilities-based or resold private lines. Currently, the Commission adds a country to this list only in response to a showing made in a Section 214 application in which an applicant seeks to provide ISR to a particular foreign country. We proposed to allow carriers to request these determinations by petition for declaratory ruling rather than by Section 214 application. By allowing applicants to file a petition for declaratory ruling, we would relieve applicants of the burden of providing the detailed carrier-specific information that is required when a carrier receives authorization to provide service under Section 63.18. This would also help to shorten and simplify Section 63.18.

72. Commenters expressed support for simplifying the procedure for obtaining Commission approval of ISR to particular destinations.¹⁴⁰ A few commenters proposed modifications that they said would further streamline the procedure. We disagree with suggestions that we allow carriers to use private lines to provide switched services to particular destinations without a specific, explicit Commission finding that the criteria for authorizing ISR to that destination have been met.¹⁴¹ It is important for all carriers to be on notice that private lines may be used to provide switched services on a given route before any carrier is allowed to do so. Without a public Commission ruling, different carriers could have different information or reach different good-faith conclusions about the permissibility of ISR.¹⁴² We recognize the value to carriers and consumers of authorizing ISR as quickly as possible, and we intend to act expeditiously in response to any request to authorize ISR to a particular destination.

73. Our analysis of the record leads us to decide that we will accept petitions filed pursuant to Section 63.16 asking us to authorize the use of private lines for switched services to particular destinations. We will place each petition on public notice and seek comment, but we may specify a shorter notice period or issue very brief orders depending on the complexity of the showing required. For example, if a petition demonstrates clearly that the destination is a WTO member country and that settlement rates for more than 50 percent of the settled U.S.-billed traffic on that route are at or below the Commission's benchmark settlement rates, then we may specify a short comment period and/or use

to carry switched traffic. In general, this is international traffic that would otherwise be subject to the accounting rates process, but instead goes over private lines with the carrier paying an interconnection fee instead of a settlement rate.

¹⁴⁰ See, e.g., DT Comments at 5; FaciliCom Comments at 3; MCI Comments at 9; AT&T Reply Comments at 6. WorldCom objected to creating a "more formal" process, stating that it would be burdensome and would add uncertainty about how long it would take for such a petition to be granted. WorldCom Comments at 6. We intend the declaratory-ruling process to be less burdensome and for petitions to be processed at least as quickly as the similar Section 214 applications are processed under our current rules. We note that our rule, as proposed and as adopted, will allow a carrier to make such a request in a Section 214 application instead of in a petition for declaratory ruling if it so chooses. See *infra* Appendix B, § 63.16.

¹⁴¹ See MCI Comments at 9; Primus Comments at 6; WorldCom Reply Comments at 3.

¹⁴² See Ameritech Reply Comments at 6; see also AT&T Reply Comments at 7.

a procedure similar to the streamlined Section 214 authorization procedure¹⁴³ because there are few if any issues in dispute. If, on the other hand, a petition seeks to make a showing that the foreign destination country offers equivalent resale opportunities, we are more likely to specify a 28-day comment period with an opportunity for replies and issue a formal written order.

74. Therefore, we will modify our proposed rule to make clear that Commission staff will have the discretion to set an appropriate period for public comment and to issue a ruling by public notice on any petition for a declaratory ruling to allow ISR to a particular destination. In any event, we will act on these applications as quickly as possible.

G. Applicants' Ownership Information

75. In the *Notice*, we proposed no longer to require applicants to list every entity that directly or indirectly owns at least 10 percent of the applicant.¹⁴⁴ Instead, we proposed to require a listing only of entities that own *more than 25 percent* of the applicant. We noted that we recently raised the level of investment by foreign carriers that must be reported to the Commission *after* the carrier is authorized, and we sought comment on whether we should continue to scrutinize investments in applicants at a greater level of detail than we require after the carrier is authorized.¹⁴⁵

76. We conclude that we should continue to require applicants for Section 214 authorizations to list every 10-percent-or-greater direct and indirect equity owner. We are persuaded by the comments of MCI and WorldCom, who oppose this proposal,¹⁴⁶ that this requirement has not become unnecessary in the public interest as a result of meaningful economic competition.¹⁴⁷ Whether the threshold is 10 percent or 25 percent, applicants will be required to provide a list of owners; although a 10-percent threshold is somewhat more burdensome,¹⁴⁸ that increased burden does not outweigh the potential value to the Commission of being able to review the additional information about the applicant's ownership. Leaving the threshold at 10 percent or greater will help us determine whether a particular application raises issues of national security, foreign policy, or law enforcement risks. The additional information will also help the Commission determine when an investment below the 25 percent level could have a significant impact on competition. Retaining the requirement that applicants list all 10-percent-or-greater equity holders is not inconsistent with our recent action raising

¹⁴³ See 47 C.F.R. § 63.12.

¹⁴⁴ *Notice* ¶ 39.

¹⁴⁵ *Id.*; see *Foreign Participation Order*, 12 FCC Rcd at 24,035-36 ¶¶ 330-334.

¹⁴⁶ See MCI Comments at 10-11; WorldCom Comments at 5; see also AT&T Comments *passim*.

¹⁴⁷ See 47 U.S.C. § 161(a)(2) (Supp. II 1996) (directing the Commission to determine whether any regulation subject to the biennial regulatory review "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service").

¹⁴⁸ See Cable & Wireless Reply Comments at 8-9.

the level of ownership by a foreign carrier that must be reported after a carrier is authorized; there, we significantly reduced a burden imposed on carriers by eliminating the requirement that carriers file any notification at all in a significant number of situations — where the carrier acquires a new equity relationship of between 10 and 25 percent.¹⁴⁹ Lifting that substantial burden justified our earlier action, but we would not have the same justification here.

77. Qwest asserts that no shareholder should have to be identified in a Section 214 application unless it is a foreign carrier or is affiliated with a foreign carrier.¹⁵⁰ Although Qwest is correct that, under the Commission's current policies, investments by foreign carriers or their affiliates are most relevant to our competitiveness analysis in the international context, initial ownership information is useful for an initial determination of issues related to national security, law enforcement, foreign policy, and trade policy. We therefore will continue to require applicants to list every owner of 10 percent or more of the applicant.

H. Reorganization of Part 63 Rules

78. Commenters support our approach to reorganizing the rules in Part 63 that are applicable to international telecommunications authorization and service.¹⁵¹ Our proposals included creation of a separate section for definitions and two new sections to list the obligations of facilities-based and resale carriers. This reorganization would make the section on contents of applications, Section 63.18, easier to follow. It would also reduce the amount of boilerplate information to be contained in applications, allowing applicants merely to certify that they will comply with the requirements of the new sections rather than repeating the text of those requirements. In proposing these changes to our rules, we endeavored to keep rule numbers consistent to the extent that doing so did not limit our ability to simplify the rules and reduce the burdens they impose. We sought comment on whether any inadvertent substantive changes would result from our proposed rules, and no commenter noted any. We therefore adopt the changes proposed in the *Notice* except as noted below. We reiterate that no substantive changes are intended other than those discussed in the text of this *Report and Order* or the *Notice*.

79. We proposed to codify the already-existing obligation that an authorized facilities-based carrier may provide service to a market served by an affiliate that terminates U.S. international traffic only if that affiliate has in effect a settlement rate with U.S. international carriers that is at or below

¹⁴⁹ It is important to note that all applicants (pursuant to Section 63.18) and authorized carriers (pursuant to Section 63.11) continue to be required to notify the Commission of any new relationship with a foreign carrier that may amount to an affiliation. An affiliation includes not only ownership by a single carrier of more than 25 percent but, for example, any controlling interest, or any investment (of more than 25 percent, or any controlling interest) by two or more carriers where the two carriers are parties to certain types of contractual relations. See *infra* Appendix B, § 63.09(e).

¹⁵⁰ Qwest Comments at 4.

¹⁵¹ See, e.g., DT Comments at 4; GTE Comments at 6; MCI Comments at 8; AT&T Reply Comments at 6.

the Commission's relevant benchmark for that market.¹⁵² We adopted this condition in our 1997 *Benchmarks Order*, and it now applies to all facilities-based international carriers.¹⁵³ Although we believe that the benchmarks condition for facilities-based carriers should be codified, we intend to act in the very near future on the petitions for reconsideration that have been filed in the *Benchmarks* proceeding, and it would be more appropriate to address this issue in that reconsideration order.¹⁵⁴ We therefore transfer the record on this issue to the *Benchmarks* reconsideration proceeding.

80. We also clarify the definition of *affiliation* that we now codify in Section 63.09(e), and we eliminate the reference to that definition in Section 63.18.¹⁵⁵ In the *Foreign Carrier Entry Order*, we created two affiliation standards — one for application of our entry standard and one for application of dominant carrier regulation.¹⁵⁶ Those two standards are currently codified in paragraphs (B) and (A), respectively, of Section 63.18(h)(1)(i). Although the two standards have been applied consistently, the common use of the term *affiliation* and the placement of that term's definition have been a source of confusion about the applicability of the "effective competitive opportunities" entry test and dominant carrier regulation.¹⁵⁷ Under the rules that we now adopt, the term *affiliation* will be used only in its broader sense, that is, when there is an interest greater than 25 percent, or a controlling interest at any level, by the U.S. carrier in a foreign carrier or by a foreign carrier in the U.S. carrier.¹⁵⁸ This is the standard used to determine whether there exists an affiliation for purposes of classifying a carrier as dominant under Section 63.10. Our entry standard will no longer be tied to a definition of *affiliation*. Instead, the new rule is clearer that our entry standard applies only when the applicant controls a foreign carrier or when more than 25 percent of the applicant (or a controlling interest) is owned by an entity that controls a foreign carrier.

¹⁵² See Notice ¶ 37.

¹⁵³ See *International Settlement Rates, Report and Order*, 12 FCC Rcd 19,806, ¶¶ 195–231 (1997), *recon. pending* (*Benchmarks Order*); see also *id.* ¶ 228 (concluding that the condition should apply to all existing Section 214 certificate holders).

¹⁵⁴ Cable & Wireless opposes codification here and, in the alternative, requests clarification of the language of the proposed rule and asks us to consider codifying the requirement to exclude foreign affiliates that lack market power. Its alternative proposals are outside the scope of this proceeding and will be considered on reconsideration of the *Benchmarks Order*.

¹⁵⁵ See Cable & Wireless Comments at 11 (asking that we clarify the applicability of the affiliation standard for regulatory purposes and for application of the effective competitive opportunities test).

¹⁵⁶ See *Foreign Carrier Entry Order*, 11 FCC Rcd at 3901–06 ¶¶ 74–87 ("Affiliation Standard for Entry Purposes"); *id.* at 3967–69 ¶¶ 248–251 ("Definition of Affiliation for the Purpose of Post-Entry Regulation").

¹⁵⁷ See Cable & Wireless, Inc., *Order, Authorization, and Certificate*, File No. ITC-214-19980515-00326, DA 98-2498 (rel. Dec. 8, 1998).

¹⁵⁸ See *infra* Appendix B, § 63.09(e); *Foreign Carrier Entry Order*, 11 FCC Rcd at 3967 ¶ 249.

81. By no longer tying our entry standard to one portion of our definition of *affiliation*, we are able to greatly simplify the definition of *affiliation* in our new definitional section, Section 63.09. This definition is also consistent with our intent in adopting our affiliation standard in the *Foreign Carrier Entry Order*.¹⁵⁹ We hope that the revised provisions contained in Sections 63.09 and 63.18 serve to clarify our definition of *affiliation* and the applicability of our entry standard, and we invite members of the public to bring informal questions and comments to the attention of International Bureau staff.

82. In drafting our proposed rules and attempting to eliminate unnecessary certifications from Section 63.18, we removed the requirement of Section 63.18(h)(3) that an applicant certify whether it is affiliated with a U.S. carrier whose facilities-based services it plans to resell. This certification, together with the obligation of carriers to update the certifications in their applications,¹⁶⁰ ensured that a carrier planning to resell an affiliated facilities-based carrier's services on an affiliated route would not escape Commission scrutiny. Our proposed rules neglected to consider this situation. Rather than continue to impose the burden of the certification that is currently required, we now add a provision to Section 63.10(a)(4) to require a carrier that is regulated as non-dominant on an affiliated route under this provision to notify the Commission if at any time it begins to provide service by reselling an affiliated facilities-based carrier's services on the affiliated route. The carrier will be deemed a dominant carrier on the route unless and until the Commission finds that the carrier qualifies for non-dominant regulation under Section 63.10.

83. We also adopt our proposals to codify a requirement that carriers notify the Commission by letter within 30 days of a name change, an assignment, or a decision not to consummate an authorized assignment. As stated in the *Notice*, we continue to believe that it is necessary for the Commission's records to reflect the identities of all authorized international carriers.¹⁶¹ We modify our proposed codification to require that carriers also notify the Commission within 30 days of the date of consummation of a transfer of control or a decision not to consummate an authorized transfer. Notification is necessary to ensure that Commission records accurately reflect the party or parties that control the carrier's operations, particularly for purposes of enforcing Commission rules and policies.

84. Cable & Wireless requests that the Commission consider releasing an updated compilation of these rules. In view of the numerous recent deregulatory and other rulemaking proceedings that have affected these rules, we believe that it would be helpful to applicants, carriers, and practitioners to release an updated compilation. We accordingly direct the International Bureau to release the updated text of Sections 63.09 through 63.24 by June 1, 1999, and to make that document available from the Bureau's Web site at <http://www.fcc.gov/ib>.

¹⁵⁹ See *Foreign Carrier Entry Order*, 11 FCC Rcd at 3904 ¶ 83.

¹⁶⁰ See 47 C.F.R. § 63.18(h)(4) (as amended by the *Foreign Participation Order*); 47 C.F.R. § 63.18(h)(5) (1997); *infra* Appendix B, § 63.21(a).

¹⁶¹ See *Notice* ¶ 43.

I. Miscellaneous Issues

85. WorldCom proposes that we apply our new rules with respect to *pro forma* assignments and transfers of control and service by wholly-owned subsidiaries to Title III earth station licenses and cable landing licenses.¹⁶² WorldCom argues that the same public interest benefits would apply to providing this additional flexibility with respect to Title III licenses and cable landing licenses as to Section 214 authorizations. WorldCom believes that its proposal would reduce the administrative burden on carriers seeking several authorizations for the same service and reduce the processing burden on the Commission.¹⁶³

86. We agree with WorldCom's concerns, but we conclude that we cannot adopt its proposal here. As we stated in the *Notice*,¹⁶⁴ the Submarine Cable Landing License Act requires that a cable landing license be obtained for any undersea cable directly or indirectly connecting the United States with any foreign country, and Executive Order No. 10,530 requires the Commission to obtain the approval of the State Department and advice from other Executive Branch agencies before granting any cable landing license.¹⁶⁵ Although Section 10 of the Communications Act gives us authority to forbear from requirements of the Communications Act, no party in this proceeding has argued that Section 10 gives the Commission the authority to forbear from the requirements of the Submarine Cable Landing License Act. We also would not make any changes in the authority granted in submarine cable landing licenses without the consent of the State Department.

87. Because most earth station licenses are not common carrier radio licenses, we might not be able to use our Section 10 forbearance authority to avoid the requirements of Section 310(d) with regard to assignments and transfers of control of earth station authorizations. Section 10 applies only to regulations or provisions of the Communications Act that apply to *telecommunications carriers* or *telecommunications services*, which we have held to refer only to common carrier licensees. Indeed, we recently forbore from requiring prior review of *pro forma* assignments and transfers of control of common carrier radio licenses licensed by the Wireless Telecommunications Bureau.¹⁶⁶ In that order, we specifically found that our forbearance could not apply to non-common carrier licenses because of

¹⁶² WorldCom Comments at 2-3.

¹⁶³ *Id.* at 4.

¹⁶⁴ *Notice* ¶ 30.

¹⁶⁵ Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39 (1994); Executive Order No. 10,530, *reprinted as amended in* 3 U.S.C. § 301 app. at 459-60 (1994).

¹⁶⁶ See Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, 13 FCC Rcd 6293 (1998).

the language of Section 10.¹⁶⁷ Because the same issues would arise here, we find that we cannot adopt WorldCom's proposals in this proceeding.

88. Tyco states that the Commission should soon examine its practice of "imposing separate regulatory requirements on common carrier and non-common carrier submarine cable systems."¹⁶⁸ We agree that this and other policies related to cable landing licenses should be reviewed and will consider initiating a proceeding to address those issues in the near future.

89. SBC argues that the Commission should stop requiring tariffs for international services.¹⁶⁹ The issue of detariffing raises many complex policy and legal issues that are not appropriately addressed in this proceeding. We do intend to consider forbearing from requiring tariffs or prohibiting tariffs altogether in a future proceeding.

90. SBC and AT&T argue that we should revise our procedures for requiring advance notification of affiliations with foreign carriers. SBC argues that those prior-review requirements, contained in Section 63.11 of our rules, should be eliminated entirely.¹⁷⁰ AT&T, on the other hand, argues that we should require advance notification of acquisitions of dominant foreign carrier equity interests of 10 percent or greater in, or by, authorized U.S. carriers.¹⁷¹ These proposals are outside the scope of this proceeding. SBC's request is pending on reconsideration of the *Foreign Participation Order* and will be considered there.

91. Cable & Wireless proposes that we change our policies permitting the provision of switched services over private lines (ISR) to recognize when foreign markets offer equivalent resale opportunities in subsets of services. Cable & Wireless's request is beyond the scope of this proceeding.¹⁷²

92. Cable & Wireless also suggests that the Commission include in its rules applicable to international Section 214 authorizations a provision specifically addressing frivolous filings. It states

¹⁶⁷ See *id.* at 6304-05 ¶ 24.

¹⁶⁸ Tyco Comments at 5 n.13.

¹⁶⁹ SBC Comments at 9-12.

¹⁷⁰ SBC Reply Comments at 15.

¹⁷¹ AT&T Comments at 10-13.

¹⁷² We note that the International Bureau recently issued an order permitting ISR between the United States and Hong Kong for data and fax services only. Hong Kong Telecommunications (Pacific) Limited, *Order and Authorization*, 13 FCC Rcd 20,050 (Int'l Bur. 1998), *applic. for review pending*. Since issuing that order, the Bureau issued an order permitting ISR between the United States and Hong Kong for all services. AT&T Corp. et al., File Nos. ITC-214-19981118-00820 and ITC-214-19980930-00689, *Order, Authorization and Certificate*, DA 98-2654 (rel. Jan. 4, 1999).

that petitions to deny applications for international Section 214 authorizations are often filed based on arguments that have been specifically rejected by the Commission with the apparent intent of removing the application from streamlined review. Cable & Wireless recognizes that Section 1.52 of the Commission's rules addresses frivolous pleadings filed in Commission proceedings and provides that the Commission can strike such pleadings, issue forfeitures, or seek disciplinary action against the attorneys involved. The Commission issued a public notice in February 1996 reminding parties of Section 1.52 and stating that the Commission intends to fully utilize its authority to discourage and deter frivolous filings and impose appropriate sanctions where such pleadings are filed.¹⁷³

93. Our decision in this order no longer to seek public comment on the great majority of international Section 214 applications reduces the ability of parties to file frivolous petitions to deny. For any situations that remain, we believe that our existing rules, in particular Section 1.52, are sufficient to address Cable & Wireless's concerns.

94. Deutsche Telekom argues that the Commission should not impose dominant carrier safeguards on any carrier whose affiliated foreign carrier's settlement rates are at or below the Commission's benchmark settlement rates.¹⁷⁴ This issue is beyond the scope of this proceeding. In addition, as AT&T states, Deutsche Telekom's argument ignores the fact that, among other things, our dominant-carrier regulations address non-price discrimination as well as price discrimination.¹⁷⁵

95. Cable & Wireless asks that we address our affiliation standard as it applies to our benchmark settlement rate rules. Cable & Wireless argues that our 25-percent affiliation standard should not apply to the benchmark settlement rate condition. This, too, would be a substantive change to our rules that is not within the scope of this proceeding.

III. Procedural Matters

A. Final Regulatory Flexibility Certification

96. The Regulatory Flexibility Act (RFA)¹⁷⁶ requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small

¹⁷³ See Commission Taking Tough Measures Against Frivolous Pleadings, Public Notice, 11 FCC Rcd 3030 (1996).

¹⁷⁴ See DT Comments at 3.

¹⁷⁵ See AT&T Reply Comments at 5 n.3.

¹⁷⁶ 5 U.S.C. § 601 *et seq.* The RFA has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

entities."¹⁷⁷ In the *Notice*, we certified that the proposed rules would not have a significant economic impact on a substantial number of small entities because they would not impose any additional compliance burden on small entities dealing with the Commission.¹⁷⁸ No comments were received concerning this certification. We now reaffirm this certification with respect to the rules adopted in this order. We anticipate that the rule changes we adopt here will reduce regulatory and procedural burdens on small entities. The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. The modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Any prospective carrier will continue to submit an application for Section 214 authorization. In most cases, the authorization will be granted expeditiously. We anticipate that the revisions we adopt here will make it easier for small entities as well as others to provide international telecommunications service without unnecessary delay. Accordingly, we certify, pursuant to Section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the *Federal Register*.

B. Final Paperwork Reduction Act of 1995 Analysis

97. This Report and Order contains a modified information collection, which has been submitted to the Office of Management and Budget (OMB) for approval. As part of our continuing effort to reduce paperwork burdens, we invite the public and other government agencies to take this opportunity to comment on the information collection contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 30 days from publication of this Report and Order in the *Federal Register*. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, room 1-C804, 445 12th Street S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

¹⁷⁷ 5 U.S.C. § 605(b).

¹⁷⁸ See *Notice* ¶ 48. The Regulatory Flexibility Act of 1990, 5 U.S.C. §§ 601-612, (RFA) as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847, requires a final regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

IV. Ordering Clauses

98. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(k), 10, 11, 201(b), 214, 303(r), 307, 309(a), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(k), 160, 161, 201(b), 214, 303(r), 307, 309(a), 310, and the Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39, this REPORT AND ORDER is hereby ADOPTED and Parts 1, 43, 63, and 64 of the Commission's rules, 47 C.F.R. pts. 1, 43, 63, 64, ARE AMENDED as set forth in Appendix B.

99. IT IS FURTHER ORDERED that the rule changes and information collections contained herein WILL BECOME EFFECTIVE 30 days after publication in the *Federal Register*, following OMB approval, unless a notice is published in the *Federal Register* stating otherwise.

100. IT IS FURTHER ORDERED that the record on codification of the benchmarks condition for facilities-based carriers developed in this proceeding be transferred to IB Docket 96-261 for future consideration.

101. IT IS FURTHER ORDERED that authority is delegated to the Chief, International Bureau, and the Chief, Common Carrier Bureau, as specified herein, to effect the decisions as set forth above.

102. IT IS FURTHER ORDERED that the Commission's Office of Legislative and Intergovernmental Affairs is directed to submit a legislative request to Congress as described in paragraph 66 of this order.

103. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

104. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order to the Council on Environmental Quality.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary